TRAUB LIEBERMAN

FIRST PARTY COVERAGE BLOG

September 11, 2018

Florida Federal Court Allows Insurer To Invoke Appraisal Provision Despite Pending Lawsuit Against Insurer

BY: Jeremy S. Macklin

In *Reynolds Ventures, Inc. v. Scottsdale Ins. Co.*, 2018 U.S. Dist. LEXIS 150508 (M.D. Fla., Sept. 5, 2018), the U.S. District Court for the Middle District of Florida held that a surplus lines insurer who acts consistently with its rights may invoke its appraisal rights after suit has been filed.

Marram Corp. ("Marram") secured a first party property insurance policy from Scottsdale Insurance Company ("Scottsdale"). Marram's property suffered water damage, and Marram filed a claim with Scottsdale. Marram allowed Reynolds Ventures, Inc. ("Reynolds"), a contractor, to directly bill Scottsdale for its repair services. Reynolds and Scottsdale disputed the amount of damage sustained by Marram. Reynolds (through rights acquired by Marram) sued Scottsdale for breach of contract for underpaid services. Scottsdale brought a motion to compel appraisal and to stay legal proceedings.

Reynolds objected to the appraisal for three reasons: (1) disputes over coverage exist, (2) Scottsdale failed to invoke an appraisal, and (3) Scottsdale failed to notify Reynolds of its rights under the policy. Scottsdale argued that it sent Reynolds a demand for appraisal before Reynolds filed suit, and that Scottsdale had not acted against its appraisal rights. The demand for appraisal on which Scottsdale relied was a letter with generally accurate policy information that references "Nationwide" not "Scottsdale" as the insurer.

The court found the controversy of the letter referencing "Nationwide" instead of "Scottsdale" irrelevant. The court held that the policy's appraisal clause was not limited by notice prior to suit. Rather, the right to an appraisal can be invoked after suit has been filed. Scottsdale could invoke its appraisal right after the suit was filed so long as it acted consistently with those rights. Because Scottsdale acted consistently with its appraisal rights, Scottsdale sufficiently invoked its appraisal right within the policy.

Reynolds next argued that Scottsdale failed to notify it of its right to participate in mediation pursuant to Florida statute Section 627.7015 (2) & (7). However, the court pointed out that Section 626.913 clearly excludes surplus lines insurers from 627.4015 (2) & (7) unless the policy specifically states otherwise. Scottsdale is a surplus line insurer and the policy did not state that Florida Statute Chapter 627 applies. Therefore, the court granted Scottsdale's motion, mandating appraisal and staying the legal proceedings.

© Traub Lieberman Straus & Shrewsberry LLP